A PRELIMINARY TREATISE ON EVIDENCE AT THE COMMON LAW. Part I. DEVELOPMENT OF TRIAL BY JURY. By JAMES BRADLEY THAYER. Boston: Little, Brown & Co. 1896.

This little book of one hundred and eighty pages has been printed before the rest of the volume, of which it forms the beginning, because the author is advised that it is needed presently in certain universities and law schools where the history of institutions is taught, and because it may be interesting to a class of readers who will not care for the remainder of the volume.

Professor Thayer displays a characteristic fortunately general among the professors of Harvard—the faculty of treating subjects thoroughly, especially their history and development. This work on Evidence deals principally with the development of the jury, but certain earlier and some collateral matters are considered, which should be understood in order that the growth of the law of evidence, which follows, can be fully comprehended.

The older modes of trial are described carefully, "to set a historical background for this ancient tribunal," the jury, the history of which has been traced through the early judicial records and the Year-Books. The reader is led to see that the law of evidence is the outcome of, and its growth indissolubly bound up with, the jury. The reasons are shown, as they presented themselves, why the English peoples exclude from consideration a great mass of evidential matter which is admitted by other nations. We see that this law of evidence grew not by legislation, but "by the slowly accumulated rulings of judges, made in the trying of causes, during the last two or three centuries."

Chapter I. is devoted to "The Older Modes of Trial." The Normans introduced into England at the time of the Conquest the parent of the jury, the inquisition. This was "the practice of ascertaining, by summoning together by public authority, a number of people most likely and most competent, as being neighbors, to know and tell the truth, and calling for their answer under oath." The Normans also took the judicial duel into England. The English modes of determining questions of fact when the jury came in are described, and quotations are given directly from the old cases.

The popular courts are first noted, as that out of which all else grew. There the judges were the whole public assembly, as though the courts were carried on by a New England town-meeting. The complaint-witness and *secta* there played an important part, the *secta*, which is referred to in the old pleadings, "*et inde producit sectam*," and which survives to this day in the form of, "and therefore he brings his suit." The old forms of trial, although the word *trial* was seldom, if ever, used, are clearly described, and the conceptions of proof in connection with these proceedings are carefully given with accounts of their gradual disappearance.

The remaining chapters, which include three-fourths of the book, are devoted to the subject proper, the development of the

jury, or court of facts. The inquisition in France is traced from the Carlovingian period. This procedure later became a part of the laws of the Normans, who conquered Neustria in 912. The royal power was strong among the Franks, and the important cases were those which related to the revenues. The kings saw that a safer way of settling matters could be had than that followed in the public courts. Inquiries were to be made of "those in the neighborhood who were known to be the better and more truthful men." Taxes were laid, services enacted, and personal status fixed, on the sworn answers of persons chosen from a certain neighborhood. This mode afterwards extended to and became a part of the judicature.

It was a type of this royal power, which was brought into England by the Normans. From the beginning of the thirteenth century the inquisition seemed slowly to die out in France, but to make a wonderful development in England. In 1099, during the reign of William Rufus, is found what Bigelow has called "the earliest record of anything like a modern judicial *iter* by the royal justiciars." Throughout the time of Henry II. (1154-1189) the inquisition began to take permanent shape.

After the reformed method of proof, that by jury, is seen fairly established in England, the author deals with the two important subjects: 1. The methods of informing the jury, and of securing and improving that quality in them which made them a fit body to "try" the facts in issue; 2. The methods of controlling the jury, of preventing the access of improper influence, of punishing them, and of reviewing their action.

Great pains have been taken in the consideration of these subjects, and a study of them may be not only of historical interest, but may tend to fix one's mind in respect to the value of the jury system now that in many places much dissatisfaction is found with it. *D. P. H.*